

ClearComm

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December 30, 1997

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Ms. Magalie Roman Salas
Secretary
FEDERAL COMMUNICATIONS COMMISSION
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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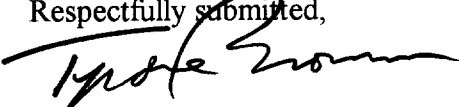
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Amendment of the Commission's Rules Regarding Installment
Payment Financing For Personal Communications Services
(PCS) Licensees, FCC 97-342, released October 16, 1997
(Second Report and Order in WT Docket No. 97-82)*

Dear Madam Secretary:

On behalf of ClearComm, L.P., and pursuant to Section 1.429(h) of the Commission's rules, 47 C.F.R. § 1.429(h) (1996), I enclose an original and eleven (11) copies of its "Comments on Petitions for Reconsideration" in the proceeding referenced above. Kindly date-stamp and return to the courier the receipt copy of this filing designated for that purpose. You may direct any questions concerning this matter to the undersigned.

Respectfully submitted,


Tyrone Brown
Senior Vice President

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of the Commission's Rules) WT Docket No. 97-82
Regarding Installment Payment)
Financing for Personal Communications)
Services (PCS) Licensees)

To: The Commission

COMMENTS ON
PETITIONS FOR RECONSIDERATION

ClearComm, L.P. ("ClearComm"), by its attorney, and pursuant to Section 1.429(f) of the Commission's rules, 47 C.F.R. § 1.429(f) (1996), and *Public Notice*, Report No. 2241, released December 8, 1997,^{1/} hereby submits its comments with respect to certain petitions for reconsideration of the Commission's *Second Report and Order* ("Order") in the above-captioned proceeding,^{2/} which were filed on November 24, 1997.

^{1/} The Commission's *Public Notice* appeared in the Federal Register on December 12, 1997. See 62 FED. REG. 65427 (December 12, 1997). However, on December 24, 1997, the Commission released an *Order* denying the joint request of Antigone Communications Limited Partnership and PCS Devco, Inc., for an extension of time to file responsive pleadings to the petitions for reconsideration filed in this proceeding. *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, DA 97-2707, released December 24, 1997 (*Order* in WT Docket No. 97-82). Thus, pursuant to § 1.46(b) of the Commission's rules, this pleading is timely filed. See 47 C.F.R. § 1.46(b) (1996).

^{2/} *Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees*, FCC 97-342, released October 16, 1997 (*Second Report and Order and Further Notice of Proposed Rule Making* in WT Docket No. 97-82) (hereinafter "*Order*").

ClearComm is a petitioner in this proceeding, and files these comments to express its support for the clear majority of other petitioners who, like itself, have urged the Commission to modify the disaggregation option set forth in the *Order* to eliminate the fifty-percent down payment forfeiture. As ClearComm stated in its own Petition, the public interest would be far better served by permitting disaggregating small business licensees to apply the portion of their down payment funds that would otherwise be forfeit toward payment of the licensees' interest obligations for the period of payment suspension and the current period. Doing so would free the licensees' remaining available capital for its most productive use: the prompt and rapid roll out of competitive PCS service to the public.

The predominant weight of the evidence in this proceeding, as set forth in the *Order*, demonstrates with poignant clarity and irresistible force that the financing crisis confronting C block licensees is genuine and pervasive. The Commission correctly recognized in the *Order* that swift, appropriate remedial action is necessary to protect the public's interest in the competitive promise of the C block from the specter of widespread defaults and bankruptcies.^{3/}

^{3/} Indeed, the evidence of the need for relief set forth in the *Order* is so inescapable that it compels rejection of Cook Inlet Region, Inc.'s ("CIRI") request that the Commission abandon its remedial scheme, reinstate its former installment payment rules, and pursue cross-default remedies against defaulting licensees. See Petition for Reconsideration in WT Docket No. 97-82, filed November 24, 1997, by Cook Inlet Region, Inc. As an initial matter, the record plainly contradicts CIRI's suggestion that only a handful of large bidders are affected by the current drought in the capital markets. In fact, although the large bidders have been very active in this proceeding, the Commission has also received requests for relief from among the smallest licensees as well, thus revealing the broad scope of the problem. See, e.g., Petitions for Reconsideration filed by AmeriCall International, LLC; Vincent D. McBride; and MFRI Incorporated. Second, CIRI's Petition wholly fails to reckon

As stated in its Petition, ClearComm believes that, in most respects, the Commission's remedial scheme strikes the proper balance between the financial needs of distressed small business licensees and the legitimate need to safeguard the integrity and fairness of the Commission's auction processes. While other petitioner's differ with ClearComm as to the degree to which they believe the *Order* should be revisited,^{4/} ClearComm takes encouragement from the fact that a clear majority of petitioners also advocate elimination of the down payment forfeiture penalty as it applies to small businesses who elect the disaggregation option.^{5/}

ClearComm's Petition developed at length the rationales which support elimination of the down payment forfeiture penalty in the disaggregation context. Many of the petitioners who also urged elimination of the penalty advanced arguments similar to those raised by ClearComm, namely, that the forfeiture penalty lacks a reasoned justification and is inconsistent with the disaggregation principles which already exist in the Commission's rules. Moreover, ClearComm further demonstrated the clear basis for distinguishing disaggregation from each of

with the serious and self-evident public interest consequences of inaction.

^{4/} A number of petitioners urge the Commission to undertake a more expansive revision of the *Order* on reconsideration and suggest changes to several aspects of the Commission's menu of options. By contrast, ClearComm's request for relief is limited to a very narrow, but nevertheless critical, element of the Commission's menu plan.

^{5/} Of the 37 petitions filed, 21 advocate the elimination of the down payment forfeiture on disaggregating licensees. These petitioners consist of large and small licensees alike. See, e.g., Petitions for Reconsideration filed by Omnipoint Corporation; Alpine PCS, Inc.; Cellexis International, Inc.; MFRI, Inc.; RFW PCS, Inc.; and NextWave Telecom, Inc.

the other two options -- amnesty and prepayment -- for which such a penalty might be more appropriate.

The widespread support for elimination of the down payment penalty as applied to the disaggregation option suggests that a consensus may be starting to coalesce on this issue. ClearComm respectfully submits that elimination of the penalty would better serve the public policy objectives which underlie the Commission's *Order* and Section 309(j) of the Communications Act. Moreover, it is a narrowly-tailored correction which preserves the overall integrity of the remedial scheme which the Commission worked so hard to achieve in the *Order* while also providing meaningful relief to many small businesses and speeding competitive C block service to the public.

For these reasons, ClearComm supports those petitioners who, like ClearComm, have urged the Commission to eliminate the down payment forfeiture penalty on the disaggregation option and permit small business licensees to apply all of their precious capital to the build out of their markets.

Respectfully submitted,

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By:



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Date: December 30, 1997

CERTIFICATE OF SERVICE

I, Karen L. McClain, hereby certify that I have, this thirtieth (30th) day of December, 1997, caused a copy of the foregoing Comments on Petitions for Reconsideration, to be sent via First-Class United States Mail, postage prepaid, to each of the following:

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